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10/624.304	07/22/2003	Masafumi Matsuda	S01459.70053.US	7805

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EXAMINER

LY. ANH

ART UNIT	PAPER NUMBER
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2162

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/23/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/624,304

Applicant(s)

MATSUDA ET AL.

Examiner

Anh Ly

Art Unit

2162

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
4a) Of the above claim(s) 7 and 11-17 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-6, 8-10 and 18-39 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This Office action is response to Applicants' AMENDMENT filed on 11/20/2006.
2. Claims 7 and 11-17 have been cancelled.
3. Claims 19-39 have been added.
4. Claims 1-6, 8, 9, 10, 18 and 19-39 are pending in this application.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 1-6, 8-10 and 18-39 are rejected under 35 U.S.C. 101 because the bodies of claims 1, 9, 10 and 18 in view of MPEP 2106 (IV)(C)(2)((1) & (2) & (a) & (b) & (c)) sections are non statutory because they are **lacking of real world useful result**.

They are missing the steps or processes producing any useful result to the invention, of having a utility to convey the final result achieved by the claimed invention, that is, they are not producing a result tied to the real/physical world or this application is not a practical application. That is, these claims are missing "**utility requirement**" of 35 U.S.C. 101 (the utility of an invention has to be (i) specific, (ii) substantial and (iii) credible (MPEP 2107.01), these claims must show that the claimed invention is "useful" for some purpose either explicitly or implicitly (Fisher, 421, F.3d 1356, 76 USPQ2d at 1230 and 1225 (Fed. Cir. 2005). Thus, requiring the applicant to distinguish the claim from the three 35 U.S.C. 101 judicial exceptions (Laws of Nature, Natural Phenomena and Abstract Ideas) (MPEP 2106 IV C) to patentable subject matter by specifically reciting in the claim the practical application. A claim that can be read so broadly as to

include statutory and nonstatutory subject matter must be amended to limit the claim to a practical application. In other words, if the specification discloses a practical application of a section 101 judicial exceptions, but the claim is broader than the disclosure such that it does not require a practical application, then the claim must be rejected. That is, it require that the claim must recite more than 101 judicial exception, in that the process claim must set forth a practical application of that judicial exception to produce a real-world result (Benson, 409 U.S. at 71-72, 175 USPQ at 676-77) and the process must have a result that can be substantially produce the same result again or to achieve the required status of having real world value or to be realized as "useful result". (In re Swartz, 232 F3d 862, 864, 56 USPQ2d 1703, 1704 (Fed. Cir. 2000)).

7. Claims 10 and 31-39 are programs or software program that have a plurality of instruction executable on a processor, non-statutory, **software per se**. Also, the software program is not executed directly or positively (must be well-defined in specification, not to be executable or cause or causing) by a physical object to constitute a machine. In addition, the computer readable medium includes communication unit conveying signals as transmission device (see spec. page 28, lines 11-18 or paragraph 0077 in Pub. No.: US 2004//0199525), which is non-statutory subject matter. Thus, it is **descriptive material per se**. The descriptive material includes non-functional and functional descriptive material. When nonfunctional descriptive material is recorded on some computer-readable medium, in a computer or on an electromagnetic carrier signal, it is not statutory since no requisite functionality is present to satisfy the practical application requirement. Merely claiming nonfunctional

descriptive material, i.e., abstract ideas, stored on a computer- readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See Diehr, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in Benson were unpatentable as abstract ideas because "[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer."). Such a result would exalt form over substance. In re Sarkar, 588 F.2d 1330, 1333, 200 USPQ 132, 137 (CCPA 1978) ("[E]ach invention must be evaluated as claimed; yet semantogenic considerations preclude a determination based solely on words appearing in the claims. In the final analysis under § 101, the claimed invention, as a whole, must be evaluated for what it is.") (quoted with approval in Abele, 684 F.2d at 907, 214 USPQ at 687). See also In re Johnson, 589 F.2d 1070, 1077, 200 USPQ 199, 206 (CCPA 1978) ("form of the claim is often an exercise in drafting"). Thus, nonstatutory music is not a computer component, and it does not become statutory by merely recording it on a compact disk. Protection for this type of work is provided under the copyright law. When nonfunctional descriptive material is recorded on some computer-readable medium, in a computer or on an electromagnetic carrier signal, it is not statutory and should be rejected under 35 U.S.C. 101. (MPEP 2106.01 [R-5] - Computer-Related Nonstatutory Subject matter)

8. The claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or act to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material *per se*.

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." Both types of "descriptive material" are

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nonstatutory when claimed as descriptive material *per se*, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)

Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See *Diehr*, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because "[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer.").

Claim Rejections - 35 USC § 112

9. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

10. Claim 18 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Because "first reproducing unit" and "second reproducing unit" do not support in the **instant applicant's specification or even in the drawings**. Applicant is reminded that no new subject matter should be added.

Priority

11. Should applicant desire to obtain the benefit of foreign priority under 35 U.S.C. 119(a)-(d) prior to declaration of an interference, a translation of the foreign application should be submitted under 37 CFR 1.55 in reply to this action.

Drawings

12. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "11-1 and 11-2" has been used to designate both in fig. 1 and fig. 12. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Also, in fig. 1, fig. 4, fig. 9, fig. 13, fig. 18, fig. 19 and fig. 20 are missing the "label" for the "boxes".

13. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the drawings must be shown or the feature(s) claimed subject matter in claims 9, 10 and 18. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

16. Claims 1-10 and 18-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pub. No.: US 20010006771 A1 issued to Kajiyama et al. (hereinafter kajiyama) in view of Pub. No.: US 2002/0131594 A1 issued to Hori et al. (hereinafter Hori).

With respect to claim 1, Kajiyama teaches a data processing apparatus (figs. 1 & 2, data processing apparatuses for receiving and transmitting data or music data from storage medium), comprising:

a reproducing means unit configured to reproduce a plurality of content data items (reproducing units (items 4 and 6 in fig. 1) reproduces the data received from

reading unit from storage medium which containing music content data items: sections 0045 and 0067; also see fig. 1, 2 and 6'); and

a control unit configured to detect a reproduction status of each content data item being reproduced by said reproducing unit, and to select a content data item from said plurality of content data items depending on a reproduction status of said content data item (see fig. 1, controlling unit, item 7, synchronizing and detecting the data for reproduction status of the content music data item storied on the storage medium: sections 0014, 0044-0045, 0079 and 0100).

Kajiyama teaches reproducing a plurality of music content data items and controlling the reproduction content data items. Kajiyama does not clearly teach a communication unit configured to transmit to another data processing apparatus a list which shows said selected content data item.

However, Hori teaches communication device transmitting and receiving data between data server/carrier and data process unit over the network (section 0104, fig. 5 see items 310, and 350 and item 20).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teachings of Kajiyama with the teachings of Hori. One having ordinary skill in the art would have found it motivated to utilize the use of distribution server having a communication device for transmitting and receiving data or music content data item between data processing and data server over the communication network as disclosed (Hori's sections 0104), into the system of Kajiyama for the purpose of reproducing data obtained by a data distribution system,

thereby, detecting reproduction music content data that must be taken for the copyright protection (Hori's sections 0002, 0010 and 0022-0024).

With respect to claims 2, 19 and 21, Kajiyama teaches the data processing apparatus as discussed in claim 1.

Kajiyama teaches reproducing a plurality of music content data items and controlling the reproduction content data items. Kajiyama does not clearly teach wherein said communication unit transmits, together with said list, the content data item on said list and wherein said communication unit communicates with another data processing apparatus via an ad hoc network, and selected tune from a tune list to a recommended tune list, and said communication unit transmits said recommended tune list to said second data processing apparatus.

However, Hori teaches communication device transmitting music and video information over communication network including a plurality of distribution servers (sections 0005-0006 and 0104; also see fig. 1 and 2), also, reproduction list including tunes or tune list stored in the memory card (sections 0220 and 0243)

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teachings of Kajiyama with the teachings of Hori. One having ordinary skill in the art would have found it motivated to utilize the use of distribution server having a communication device for transmitting and receiving data or music content data item between data processing and data server over the communication network as disclosed (Hori's sections 0104), into the system of Kajiyama for the purpose of reproducing data obtained by a data distribution system,

thereby, detecting reproduction music content data that must be taken for the copyright protection (Hori's sections 0002, 0010 and 0022-0024).

With respect to claim 3, Kajiyama teaches wherein said control unit detects the content data item having been reproduced longer than a predetermined time period (time information: section 0077).

With respect to claim 4, Kajiyama teaches wherein said control unit detects a specific part of the content data item being reproduced (detecting the reproduction music content data item: sections 0044-0046).

With respect to claim 5, Kajiyama teaches wherein said control unit detects the content data item having been reproduced from beginning to end (from beginning and ending track: sections 0099, 0106 and 0116).

With respect to claim 6, Kajiyama teaches wherein said control unit detects, during reproduction of the content data item, the number of times said content data item has been reproduced from the beginning thereof (sections 0130-0131).

With respect to claim 8, Kajiyama teaches wherein said control unit searches for another data processing apparatus, and said communication unit transmits said list to said another data processing apparatus when said another data processing apparatus has been detected by said control unit (see figs 1 & 2).

With respect to claim 20, Kajiyama teaches wherein said control unit transfers said list to a plurality of data processing apparatuses on said ad hoc network (see fig. 1, reading unit and reproducing unit).

With respect to claim 9, Kajiyama teaches a data processing method for use with a data processing apparatus (figs. 1 and 2, data processing apparatuses for receiving and transmitting data or music data from storage medium), the method comprising steps of:

reproducing a plurality of content data items (reproducing units (items 4 and 6 in fig. 1) reproduces the data received from reading unit from storage medium which containing music content data items: sections 0045 and 0067; also see fig. figs. 1, 2 and 6');

detecting a reproduction status of each content data item being reproduced (see fig. 1, controlling unit, item 7, synchronizing and detecting the data for reproduction status of the content music data item storied on the storage medium: sections 0014, 0044-0045, 0079 and 0100); and

selecting a content data item being reproduced from said plurality of content data items depending on a detected reproduction status of said content data item (see fig. 1, controlling unit, item 7, synchronizing and detecting the data for reproduction status of the content music data item storied on the storage medium: sections 0014, 0044-0045, 0079 and 0100; also, a user can select the music or content data to reproduce another version, see fig. 7 and sections 0074 and 0163-0164);

Kajiyama teaches reproducing a plurality of music content data items and controlling the reproduction content data items. Kajiyama does not clearly transmitting a list which shows said selected content data item to a second data processing apparatus.

However, Hori teaches communication device transmitting and receiving data between data server/carrier and data process unit over the network (section 0104, fig. 5 see items 310, and 350 and item 20; also see fig. 1 and 2).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teachings of Kajiyama with the teachings of Hori. One having ordinary skill in the art would have found it motivated to utilize the use of distribution server having a communication device for transmitting and receiving data or music content data item between data processing and data server over the communication network as disclosed (Hori's sections 0104), into the system of Kajiyama for the purpose of reproducing data obtained by a data distribution system, thereby, detecting reproduction music content data that must be taken for the copyright protection (Hori's sections 0002, 0010 and 0022-0024).

Claim 22 is essentially the same as claim 2 except that it is directed to the data processing method rather than the data processing apparatus, and is rejected for the same reason as applied to the claim 2 hereinabove.

Claim 23 is essentially the same as claim 3 except that it is directed to the data processing method rather than the data processing apparatus, and is rejected for the same reason as applied to the claim 3 hereinabove.

Claim 24 is essentially the same as claim 4 except that it is directed to the data processing method rather than the data processing apparatus, and is rejected for the same reason as applied to the claim 4 hereinabove.

Claim 25 is essentially the same as claim 5 except that it is directed to the data processing method rather than the data processing apparatus, and is rejected for the same reason as applied to the claim 5 hereinabove.

Claim 26 is essentially the same as claim 6 except that it is directed to the data processing method rather than the data processing apparatus, and is rejected for the same reason as applied to the claim 6 hereinabove.

Claim 27 is essentially the same as claim 8 except that it is directed to the data processing method rather than the data processing apparatus, and is rejected for the same reason as applied to the claim 8 hereinabove.

Claim 28 is essentially the same as claim 19 except that it is directed to the data processing method rather than the data processing apparatus, and is rejected for the same reason as applied to the claim 19 hereinabove.

Claim 29 is essentially the same as claim 20 except that it is directed to the data processing method rather than the data processing apparatus, and is rejected for the same reason as applied to the claim 20 hereinabove.

Claim 30 is essentially the same as claim 21 except that it is directed to the data processing method rather than the data processing apparatus, and is rejected for the same reason as applied to the claim 21 hereinabove.

Claim 10 is essentially the same as claim 9 except that it is directed to at least one computer-readable medium rather than a data processing method, and is rejected for the same reason as applied to the claim 9 hereinabove.

Claim 31 is essentially the same as claim 22 except that it is directed to at least one computer-readable medium rather than a data processing method, and is rejected for the same reason as applied to the claim 22 hereinabove.

Claim 32 is essentially the same as claim 23 except that it is directed to at least one computer-readable medium rather than a data processing method, and is rejected for the same reason as applied to the claim 23 hereinabove.

Claim 33 is essentially the same as claim 24 except that it is directed to at least one computer-readable medium rather than a data processing method, and is rejected for the same reason as applied to the claim 24 hereinabove.

Claim 34 is essentially the same as claim 25 except that it is directed to at least one computer-readable medium rather than a data processing method, and is rejected for the same reason as applied to the claim 25 hereinabove.

Claim 35 is essentially the same as claim 26 except that it is directed to at least one computer-readable medium rather than a data processing method, and is rejected for the same reason as applied to the claim 26 hereinabove.

Claim 36 is essentially the same as claim 27 except that it is directed to at least one computer-readable medium rather than a data processing method, and is rejected for the same reason as applied to the claim 27 hereinabove.

Claim 37 is essentially the same as claim 28 except that it is directed to at least one computer-readable medium rather than a data processing method, and is rejected for the same reason as applied to the claim 28 hereinabove.

Claim 38 is essentially the same as claim 29 except that it is directed to at least one computer-readable medium rather than a data processing method, and is rejected for the same reason as applied to the claim 29 hereinabove.

Claim 39 is essentially the same as claim 30 except that it is directed to at least one computer-readable medium rather than a data processing method, and is rejected for the same reason as applied to the claim 30 hereinabove.

With respect to claim 18, Kajiyama teaches a data processing system having a first data processing apparatus and a second data processing apparatus (see figs. 1, 2 and 3 and a number of PCs: sections 0007-0008);

wherein said first data processing apparatus comprises:

a first reproducing unit configured to reproduce a plurality of content data items (fig. 1, item 4; reproducing units (items 4 and 6 in fig. 1) reproduces the data received from reading unit from storage medium which containing music content data items: sections 0045 and 0067; also see fig. 1, 2 and 6');

a first control unit configured to detect a reproduction status of each content data item being reproduced by at said reproducing unit, and to select a content data item from said plurality of content data items depending on a reproduction status of said content data item (fig. 1, item 7; see fig. 1, controlling unit, item 7, synchronizing and detecting the data for reproduction status of the content music data item storied on the storage medium: sections 0014, 0044-0045, 0079 and 0100); and

wherein said second data processing apparatus comprises:

a second reproducing unit configured to reproduce a plurality of content data items (fig. 1, item 6; reproducing units (items 4 and 6 in fig. 1) reproduces the data received from reading unit from storage medium which containing music content data items: sections 0042, 0044-0045 and 0067; also see fig. 1, 2 and 6'); and

a second control unit configured to detect a reproduction status of each content data item being reproduced at said reproducing unit, and to select a content data item from said plurality of content data items depending on a reproduction status of said content data item (fig. 1, item 7; see fig. 1, controlling unit, item 7, synchronizing and detecting the data for reproduction status of the content music data item storied on the storage medium: sections 0014, 0044-0045, 0079 and 0100).

Kajiyama teaches reproducing a plurality of music content data items and controlling the reproduction content data items. Kajiyama does not clearly teach a first communication unit configured to transmit to the second data processing apparatus a first list which shows said selected content data item; and a second communication unit configured to transmit to the second data processing apparatus a second list which shows said selected content data item.

However, Hori teaches communication device transmitting and receiving data between data server/carrier and data process unit over the network (section 0104, fig. 5 see items 310, and 350 and item 20).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teachings of Kajiyama with the teachings of Hori. One having ordinary skill in the art would have found it motivated to

utilize the use of distribution server having a communication device for transmitting and receiving data or music content data item between data processing and data server over the communication network as disclosed (Hori's sections 0104), into the system of Kajiyama for the purpose of reproducing data obtained by a data distribution system, thereby, detecting reproduction music content data that must be taken for the copyright protection (Hori's sections 0002, 0010 and 0022-0024).

Conclusion

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Contact Information

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANH LY, whose telephone number is (571) 272-4039 or via e-mail: ANH.LY@USPTO.GOV (**written authorization being given by Applicant(s) - MPEP 502.03 [R-2]**) or fax to (571) 273-4039 (examiner's personal fax number).

The examiner can normally be reached on TUESDAY – THURSDAY from 8:30 AM – 3:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **John Breene**, can be reached on (571) 272-4107.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Any response to this action should be mailed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, or faxed to: **Central Fax Center: (571) 273-8300**

ANH LY 
FEB. 5th, 2007


JOHN BREENE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100